REMARKS

Claims 1, 3, 7-25, 29-42, and 44-58 are pending. In an Office Action mailed April 25, 2008 ("OA"), the Examiner rejected claims 1, 3, 7-25, 29-42, and 44-58. Applicant amends claims 24, 25, and 29-41 for clarification purposes only. Applicant respectfully traverses the rejections and requests reconsideration based on the following remarks.

In addition, Applicant does not necessarily agree with or acquiesce to the Examiner's characterization of the claims or the prior art, even if those characterizations are not addressed herein.

Allowable Subject Matter

Applicant once again thanks the Examiner for indicating that claims 1, 3, 7-25, 29-42, and 44-58 include language that is patentable over the prior art.

Rejections Under 35 U.S.C. §101

The Examiner rejected claims 1, 3, 7-25, 29-42, and 44-58 by alleging that these claims are directed to nonstatutory subject matter. Specifically, the Examiner alleged "[t]he claims are directed to a signal directly or indirectly by claiming a medium and the Specification recites evidence where the computer readable medium is [defined] as a 'wave' (such as a carrier waver, signal(s)). In that event, the claims are directed to a form of energy [that, at present,] the office feels does not fall into a category of invention." OA at page 2. Applicant respectfully traverses the rejection.

According to 35 U.S.C. § 101, "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter . . . may obtain a

patent." For Applicant to obtain a patent, the Applicant's claims must fall within one of these four statutory categories.

Applicant respectfully submits that each of the claims fall within at least one of these four statutory groups. Claims 1, 3, and 7-23 are directed to a "computer-implemented method," which falls within the statutory "process" recited in 35 U.S.C. § 101. Claims 24, 25, and 29-41 are directed to a "computer program ... stored in memory," which at least falls within the statutory "machine" recited in 35 U.S.C. § 101. Finally, claims 42 and 44-58 are directed to a "computer system" having physical components, which also falls at least within the statutory "machine" recited in 35 U.S.C. § 101.

The Examiner alleged "the claims are directed to a signal directly." OA at page 2. The Examiner pointed to pages 12, 14, and 15 when rejecting the claims. *Id.* The relevant section, based on Applicant's understanding, is provided as follows:

> In FIG. 1, carrier 970 is illustrated as being outside computer 900. For communicating CPP 100 to computer 900, carrier 970 may be located in input device 940. Carrier 970 may be any computer-readable medium, such as a medium explained above (cf. memory 920). Generally, carrier 970 may be an article of manufacture having a computer-readable medium with computer-readable program code to cause the computer to perform methods of the present invention. **Further, signal 980 can also embody computer program product 100.**

Applicant's specification at page 14, paragraph 51 (emphasis added).

In other words, at least according to specification and Figure 1, carrier 970 appears to be a portable article of manufacture or component, such as an optical disk, that can store a computer program—not a "carrier wave," as purported by the Examiner. This interpretation is consistent with the Applicant's specification because it refers to the carrier as being a computer-readable medium, such as memory 920.

Furthermore, Applicant also requests that the Examiner note the distinction between carrier 970 and signal 980 made in the cited paragraph above. This cited paragraph recites that a carrier can include a computer program product. By further acknowledging that a signal "can also embody computer program product," Applicant's specification clearly denotes the differences between carrier 970 and signal 980. By distinguishing the difference between carrier 970 and signal 980 in this manner, Applicant's specification clarifies that carrier 970 and signal 980 are not equivalent. Accordingly, Applicant respectfully submits that the reference to the term carrier is not a carrier wave and not a signal.

The Examiner also stated ""[t]he claims are directed to a signal ... indirectly." OA at page 2. Applicant understands this statement as the Examiner indicating that the claims are nonstatutory because they refer to a signal even though the claims are directed to statutory subject matter. Applicant reminds the Examiner that this interpretation is improper according to the MPEP, which recites:

> For example, a claimed invention may be a combination of devices that appear to be directed to a machine and one or more steps of the functions performed by the machine. Such instances of mixed attributes, although potentially confusing as to which category of patentable subject matter the claim belongs, does not affect the analysis to be performed by USPTO personnel. Note that an apparatus claim with process steps is not classified as a "hybrid" claim; instead, it is simply an apparatus claim including functional limitations. See, e.g., *R.A.C.C. Indus. v. Stun-Tech, Inc.*, 178 F.3d 1309 (Fed. Cir. 1998) (unpublished).

MPEP § 2106 (IV)(B).

In other words, even if a claim refers to using signals, the claim is still statutory when the claim, as a whole, is directed to statutory subject matter, such as a machine or a process.

Therefore, Applicant respectfully submits that the claims are not directed to a signal *per se* because they are directed to a computer-implemented method, a computer program stored in memory, or a computer system, each of which are statutory according to 35 U.S.C. § 101. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection.

Conclusion

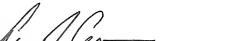
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of all pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 10, 2008

By: 

Aaron J. Capron
Reg. No. 56,170
(650) 849-6680

Filed by EFS-Web